47pg

MONTANA LEGISLATIVE HISTORY

Chapter 274 ~~19~~ 2003

Bill H 438 S _____ Original bill & history X C

H. Committee on BUSINESS & LABOR			S. Committee on BUSINESS & LABOR		
Hearing Date(s)	2/5	X C	Hearing Date(s)	3/21	C
EXEC ACTION	2/11	X C	& EXEC ACTION		C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

HB 436 INTRODUCED BY A. OLSON *LC1240 DRAFTER: MITCHELL*

EXEMPT CERTAIN LEASES SUBJECT TO PERMITTING FROM MEPA REVIEW

1/25	INTRODUCED		
1/25	REFERRED TO NATURAL RESOURCES		
2/12	HEARING		
2/13	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	18	0
2/13	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	97	0
2/17	3RD READING PASSED	97	0
	TRANSMITTED TO SENATE		
2/24	REFERRED TO NATURAL RESOURCES		
3/05	HEARING		
3/14	HEARING		
3/15	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	10	2
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED ON VOICE VOTE	49	1
3/19	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
3/20	SENT TO ENROLLING		
3/21	RETURNED FROM ENROLLING		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/24	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
3/27	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 147		
	EFFECTIVE DATE: 3/27/2003 - ALL SECTIONS		

HB 437 INTRODUCED BY A. OLSON *LC0446 DRAFTER: PETESCH*

IMPLEMENTATION OF CONSTITUTIONAL PROVISIONS ON THE ENVIRONMENT

1/25	INTRODUCED		
1/25	REFERRED TO NATURAL RESOURCES		
1/25	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/03	FISCAL NOTE PRINTED		
2/12	HEARING		
2/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	12	6
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/25	2ND READING PASSED	72	28
2/26	3RD READING PASSED	61	37
	TRANSMITTED TO SENATE		
2/27	REFERRED TO NATURAL RESOURCES		
3/05	HEARING		
3/07	REVISED FISCAL NOTE REQUESTED		
3/10	HEARING		
3/13	REVISED FISCAL NOTE RECEIVED		
3/14	REVISED FISCAL NOTE PRINTED		
3/18	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED AS AMENDED	10	2
3/18	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	REVISED FISCAL NOTE RECEIVED		
3/25	REVISED FISCAL NOTE PRINTED		
3/27	2ND READING CONCURRED	29	18
3/28	3RD READING CONCURRED	33	17
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING SENATE AMENDMENTS CONCURRED	60	40
4/09	3RD READING PASSED AS AMENDED BY SENATE	64	35
4/09	SENT TO ENROLLING		
4/10	RETURNED FROM ENROLLING		
4/11	SIGNED BY SPEAKER		
4/11	SIGNED BY PRESIDENT		
4/12	TRANSMITTED TO GOVERNOR		
4/16	SIGNED BY GOVERNOR		
4/17	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 361		
	EFFECTIVE DATE: 4/16/2003 - ALL SECTIONS		

HB 438 INTRODUCED BY FORRESTER *LC0271 DRAFTER: CAMPBELL*

REVISE CONSTRUCTION PROMPT PAYMENT LAW

1/25	INTRODUCED		
1/25	REFERRED TO BUSINESS AND LABOR		
2/05	HEARING		
2/11	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	17	1
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/14	2ND READING PASSED	94	6
2/15	3RD READING PASSED	94	4
	TRANSMITTED TO SENATE		
2/24	REFERRED TO BUSINESS AND LABOR		
3/21	HEARING		
3/22	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	8	0
3/22	COMMITTEE REPORT—BILL CONCURRED		
3/31	2ND READING CONCURRED ON VOICE VOTE	50	0
4/01	3RD READING CONCURRED	50	0
	RETURNED TO HOUSE		
4/02	SENT TO ENROLLING		
4/02	RETURNED FROM ENROLLING		
4/03	SIGNED BY SPEAKER		
4/03	SIGNED BY PRESIDENT		
4/04	TRANSMITTED TO GOVERNOR		
4/09	SIGNED BY GOVERNOR		
4/10	CHAPTER NUMBER ASSIGNED		
	CHAPTER NUMBER 274		
	EFFECTIVE DATE: 10/01/2003 - ALL SECTIONS		

HB 439 INTRODUCED BY P. CLARK *LC1581 DRAFTER: STERNBERG*

REVISE FISH AND GAME COMMISSION

1/25	INTRODUCED		
1/25	REFERRED TO FISH, WILDLIFE AND PARKS		
2/11	HEARING		
2/18	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

HB 440 INTRODUCED BY FACEY *LC0450 DRAFTER: CAMPBELL*

INTEREST TO TENANT ON CERTAIN SECURITY DEPOSITS

1/25	INTRODUCED		
1/25	REFERRED TO BUSINESS AND LABOR		
1/29	HEARING		
1/30	TABLED IN COMMITTEE		
2/28	MISSED DEADLINE FOR GENERAL BILL TRANSMITTAL		

HB 441 INTRODUCED BY CYR *LC1020 DRAFTER: VANDENBOSCH*

PRORATION OF TAXES ON CENTRALLY ASSESSED PROPERTY IN SUBDIVISION

1/25	INTRODUCED		
1/25	REFERRED TO LOCAL GOVERNMENT		
2/11	HEARING		
2/21	COMMITTEE EXECUTIVE ACTION—BILL PASSED AS AMENDED	16	0
2/21	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/24	PLACED ON CONSENT CALENDAR		
2/25	3RD READING PASSED	97	3
	TRANSMITTED TO SENATE		
2/26	REFERRED TO TAXATION		
3/18	HEARING		
3/19	COMMITTEE EXECUTIVE ACTION—BILL CONCURRED	11	0
3/19	COMMITTEE REPORT—BILL CONCURRED		
3/22	2ND READING CONCURRED ON VOICE VOTE	45	0
3/24	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/25	SENT TO ENROLLING		
3/27	RETURNED FROM ENROLLING		
3/27	SIGNED BY SPEAKER		
3/28	SIGNED BY PRESIDENT		
3/31	TRANSMITTED TO GOVERNOR		
4/07	RETURNED WITH GOVERNOR'S PROPOSED AMENDMENTS		
4/10	2ND READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	99	0
4/11	3RD READING GOVERNOR'S PROPOSED AMENDMENTS CONCURRED	93	4

Bill Draft Number: LC0271
Bill Type - Number: HB 438
Short Title: Revise construction prompt payment law
Primary Sponsor: Gary Forrester

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 47

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/10/2003			
(H) Signed by Governor	04/09/2003			
(H) Transmitted to Governor	04/04/2003			
(S) Signed by President	04/03/2003			
(H) Signed by Speaker	04/03/2003			
(H) Returned from Enrolling	04/02/2003			
(C) Sent to Printing	04/02/2003			
(H) Sent to Enrolling	04/02/2003			
(S) Returned to House	04/01/2003			
(S) 3rd Reading Concurred	04/01/2003	50	0	
(S) Scheduled for 3rd Reading	04/01/2003			
(S) 2nd Reading Concurred on Voice Vote	03/31/2003	50	0	
(S) Scheduled for 2nd Reading	03/31/2003			
(S) 2nd Reading Passed Consideration	03/28/2003			
(S) Scheduled for 2nd Reading	03/28/2003			
(S) Scheduled for 2nd Reading	03/27/2003			
(S) Committee Report--Bill Concurred	03/22/2003			(S) Business and Labor
(S) Committee Executive Action--Bill Concurred	03/22/2003	8	0	(S) Business and Labor
(S) Hearing	03/21/2003			(S) Business and Labor
(S) Referred to Committee	02/24/2003			(S) Business and Labor
(S) First Reading	02/24/2003			
(H) Transmitted to Senate	02/15/2003			
(H) 3rd Reading Passed	02/15/2003	94	4	
(H) Scheduled for 3rd Reading	02/15/2003			
(H) 2nd Reading Passed	02/14/2003	94	6	
(H) Scheduled for 2nd Reading	02/14/2003			
(C) Sent to Printing	02/11/2003			
(H) Committee Report--Bill Passed as Amended	02/11/2003			(H) Business and Labor
(H) Committee Executive Action--Bill Passed as	02/11/2003	17	1	(H) Business and

Amended		Labor
(H) Hearing	02/05/2003	(H) Business and Labor
(C) Introduced Bill Text Available Electronically	01/25/2003	
(H) Referred to Committee	01/25/2003	(H) Business and Labor
(H) First Reading	01/25/2003	
(H) Introduced	01/25/2003	
(C) Draft Delivered to Requester	01/23/2003	
(C) Draft Ready for Delivery	01/22/2003	
(C) Draft in Assembly/Executive Director Review	01/21/2003	
(C) Draft in Final Drafter Review	01/21/2003	
(C) Draft in Input/Proofing	01/21/2003	
(C) Bill Draft Text Available Electronically	01/20/2003	
(C) Draft to Drafter - Edit Review [CMD]	01/20/2003	
(C) Draft in Edit	01/18/2003	
(C) Draft in Legal Review	01/18/2003	
(C) Draft On Hold	01/07/2003	
(C) Draft to Requester for Review	12/21/2002	
(C) Draft On Hold	12/10/2002	
(C) Draft Request Received	07/09/2002	

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Ryan	Don	
Drafter	Campbell	Bart	
Primary Sponsor	Forrester	Gary	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Trade Regulations and Competition		Simple	TRAD
Public Contracts (see also: Contracts)		Simple	PCON

Additional Bill Information

Probable Fiscal Note: No

Preintroduction Required: N

Session Law Ch. Number: 274
DEADLINE
Category: General Bills
Transmittal Date: 02/28/2003
Return (with 2nd house amendments) Date: 04/05/2003

Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	01-OCT-03	

HOUSE BILL NO. 438

INTRODUCED BY G. FORRESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTION 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-2103, MCA, is amended to read:

"28-2-2103. Payment to contractor and subcontractor. (1) (a) ~~If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.~~ Except as provided in [section2], each construction contract governed by this section must define, within the contract, a monthly billing cycle for the contractor to submit monthly progress payment requests and final payment requests to the owner. The contractor shall submit payment requests to the owner or the owner's representative. Payment requests must be based upon actual or estimated work performed and materials supplied during the preceding monthly billing cycle. This requirement does not preclude an owner from mutually agreeing with the contractor to prepay for materials. The owner or owner's representative is considered to have received a payment request when the payment request is submitted to any person designated by the owner or owner's representative to receive the payment request.

(b) Except as provided in [section 2], a contractor's request for payment is considered approved by the owner 21 days after receipt of the request by the owner or the owner's representative, unless, prior to that time, the owner or the owner's representative provides the contractor with a written statement containing specific items in the request for payment that are being disapproved by the owner or the owner's representative.

(c) The owner or the owner's representative may disapprove the request for payment or a portion of the request based upon a claim of:

(i) unsatisfactory job progress;

(ii) failure to remedy defective construction work or materials;

(iii) disputed work or materials;

(iv) failure to comply with material provisions of the construction contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data;

(v) failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties;

(vi) damage to the owner; or

(vii) the existence of reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum.

(d) An owner or owner's representative may only withhold an amount from a payment that is sufficient to pay the direct expenses that the owner or the owner's representative may reasonably expect will be necessary to correct any claim based on the items set out in subsection (1)(c).

(e) A written statement by an owner or owner's representative must be furnished to the contractor specifying a condition that is listed in subsection (1)(c) for which approval of the request for payment or a portion of the request for payment is being withheld. If an owner or the owner's representative disapproves only a portion of a request for payment, the remainder of the request for payment must be considered approved.

(f) Except as provided in [section2], if an owner approves all or a portion of a contractor's request for payment as provided in subsection (1)(b), the owner shall pay the contractor the approved amount within 7 days after the contractor's request for payment is approved.

(g) Upon written request of a subcontractor, an owner or owner's representative shall notify the subcontractor of any progress payment or final payment made to the contractor within 5 days of issuing payment. The subcontractor's request for notice remains in effect for the duration of the subcontractor's work on the project or until the contractor has been fully paid.

(h) Payment is not required under this subsection (1) unless the contractor provides the owner or the owner's representative with a billing statement or estimate for the work performed or the material supplied in accordance with the terms of the contract.

(2) (a) Within ~~3 working~~ 7 days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in

accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (2) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

(c) Prior to submitting a monthly or final pay application to the owner or the owner's representative, the general contractor may disapprove the subcontractor's request for payment or a portion of the request based upon a written claim of any of the conditions listed in subsection (1)(c).

(3) (a) Within ~~3 working~~ 7 days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (3) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract."

NEW SECTION. **Section 2. Alternative billing cycle.** (1) A construction contract may provide for a billing cycle other than a monthly billing cycle if the construction contract specifically sets forth another billing cycle and either of the following applies:

(a) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. Payment requests for this contract must be submitted as follows:

_____

_____

_____; or

(b) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. A written description of the other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or the owner's designated agent must provide this written description on request.

(2) An owner may change the number of days to approve a contractor's payment request to later than

21 days after the date the payment request is submitted if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later approval date defined by a specified number of days after the payment request is submitted; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Approval of Payment Request Provision

This contract allows the owner to approve the contractor's payment request within ___ days after it is received by the owner.

(3) An owner may make payments later than 7 days after the date that the contractor's request for payment is approved if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after approval; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type on each page of the plans, including bid plans and construction plans:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ___ days after approval of the payments.

NEW SECTION. **Section 3. Construction contracts -- void provisions.** (1) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract for a project in this state and that makes the contract subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from a dispute pertaining to the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.

(2) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract and that states that a party to the contract may not suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract as provided in 28-2-2103 is against the public policy of this state and is void and unenforceable.

NEW SECTION. **Section 4. Suspension of performance -- termination.** (1) (a) A contractor may suspend performance under a construction contract for failure by the owner to make timely payment of the amount approved pursuant to 28-2-2103, and the contractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A contractor shall provide written notice to the owner at least 7 calendar days before the contractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A contractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (1).

(d) A construction contract may not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection (1).

(2) (a) A subcontractor may suspend performance under a construction contract if the owner fails to make timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work and the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (2).

(d) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (2).

(3) (a) A subcontractor may suspend performance under a construction contract if the owner makes timely payment of amounts approved pursuant to section 28-2-2103 for the subcontractor's work but the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (3).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (3).

(4) (a) A subcontractor may suspend performance under a construction contract if the owner declines to approve portions of the contractor's payment request pursuant to 28-2-2103 for the subcontractor's work and the reasons for the owner's refusal to approve are not the fault of or directly related to the subcontractor's work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (4).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (4).

(5) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor.

(6) A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials, or services until the contractor or subcontractor is paid the amount that was approved, together with any costs incurred for mobilization and project rescheduling resulting from the shutdown or restartup of a project.

(7) Written notice required under this section must be considered to have been provided if either of the following occurs:

(a) the written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended; or

(b) the written notice is delivered at or sent by any means that provides written, third-party verification of delivery to the last-known business address of the party receiving notice.

NEW SECTION. **Section 5. Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [sections 2 through 4].

NEW SECTION. **Section 6. Applicability.** [This act] applies to construction contracts entered into on or after October 1, 2003.

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 5, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 501 (1/31/03); HB 438 (1/31/03); HB 482 (1/31/03)

Tom Ebzery, Attorney at Law, St. Vincent Hospital, Billings, said they support the bill.
{Tape: 1; Side: A; Approx. Time Counter: 146 - 158}

John Flink, Montana Hospital Association, said the technology in the health care world is changing dramatically. The new category of radiological technologists is an important addition to help utilize the technology.
{Tape: 1; Side: A; Approx. Time Counter: 158 - 175}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. MENDENHALL asked Dr. Darby the range of radiological procedures the technologist were able to do.
{Tape: 1; Side: A; Approx. Time Counter: 175 - 206}

REP. WEISS asked Dr. Darby if a physician was available at all times during procedures.
{Tape: 1; Side: A; Approx. Time Counter: 206 - 230}

Closing by Sponsor:

The sponsor closed.
{Tape: 1; Side: A; Approx. Time Counter: 230 - 238}

HEARING ON HB 438

Sponsor: REP. GARY FORRESTER, HD 16, Billings

Opening Statement by Sponsor:

REP. FORRESTER read the title of the bill: An act revising the requirements for payments to contractors and subcontractors with respect to construction contracts; providing that a construction contract may provide for a billing cycle that is other than a monthly billing cycle; providing that certain construction contract provisions are against state policy and are void and unenforceable; establishing conditions under which a contractor or subcontractor may suspend performance or terminate a construction contract.
{Tape: 1; Side: A; Approx. Time Counter: 238 - 266}

Proponents' Testimony:

Carl Schweitzer, Sub Contractors Association of Montana (ASAM), explained the changes in the bill and then provided a construction payment timetable.
EXHIBIT(buh25a03)
{Tape: 1; Side: A; Approx. Time Counter: 266 - 478}

Jerry Cooper, Great Falls masonry contractor, spoke of his problems as a subcontractor and collecting the wages which were due him.
{Tape: 1; Side: A; Approx. Time Counter: 478 - 500}

Margaret Morgan, State Association of the Independent Electrical Contractors, said this bill will bring certainty and accountability to the payment process. Subcontractors with limited capital can only be stretched so far; and prompt payment on work performed can make a difference.
{Tape: 1; Side: B; Approx. Time Counter: 1 - 9}

Dick Anderson, Dick Anderson Construction, said this bill is about being paid on time.
{Tape: 1; Side: B; Approx. Time Counter: 9 - 44}

Cary Hegreberg, Montana Contractors Association, said this issue of prompt payment has become a bigger issue to all of the members.
{Tape: 1; Side: B; Approx. Time Counter: 44 - 72}

Opponents' Testimony:

John Fitzpatrick, Northwest Energy, said they do an extensive amount of construction every year. They do endorse the concept of this bill and with amendments it could be good for contractors and subcontractors.
{Tape: 1; Side: B; Approx. Time Counter: 72 - 164}

Robert Throssell, Montana Technical Counsel, said this bill interferes with individual contractual rights. ***{Tape: 1; Side: B; Approx. Time Counter: 164 - 250}***

Rose Hughes, American Counsel of Engineering Companies, provided a copy of the bill with their revisions to the alternative billing cycle.
EXHIBIT(buh25a04)
{Tape: 1; Side: B; Approx. Time Counter: 250 - 317}

Shaun Bubb, Montana School Board Association, said they have technical concerns with the existing bill.
{Tape: 1; Side: B; Approx. Time Counter: 317 - 335}

Doug Kaercher, Montana Association of Counties, said they were sympathetic to the cause of the contractors. Due to the nature of the local government projects, they have considerable reliance on federal and state dollars for funding of these projects. The exemption of public entities is a good addition to this bill.
{Tape: 1; Side: B; Approx. Time Counter: 335 - 356}

Informational Testimony: None

Questions from Committee Members and Responses:

REP. BERGREN asked Mr. Currie about the construction projects for the Department of Transportation. **Jim Currie, Montana Department of Transportation,** said the reason they didn't testify on the bill was due to the fact of their neutral standing. Apparently this bill does not impact state agencies.
{Tape: 1; Side: B; Approx. Time Counter: 356 - 392}

REP. BOOKOUT-REINICKE asked Mr. Cooper questions about federal construction; i.e. "Is there still interest paid if a payment is not received by the contractor in a timely manner?" **Mr. Cooper** said he had never received any interest with a federal payment.
{Tape: 1; Side: B; Approx. Time Counter: 392 - 415}

REP. MORGAN asked Mr. Fitzpatrick about the "prompt-pay" clause in a contract. **Mr. Fitzpatrick** said he was not aware of any particular construction contracts with those provisions. There isn't a provision in state law to speak of this.
{Tape: 1; Side: B; Approx. Time Counter: 415 - Tape: 2; Side: A; Approx. Time Counter: 44}

REP. BITNEY asked Mr. Schweitzer some subcontractor questions regarding one sub who didn't do a good job but the sub following his work was good. Shouldn't the last sub be paid immediately. **Mr. Schweitzer** said they should, but most often are not.
{Tape: 2; Side: A; Approx. Time Counter: 45 - 143}

REP. MAEDJE asked Mr. Fitzpatrick about language in a contract regarding inappropriate language in a contract and payment provisions. **Mr. Fitzpatrick** reiterated previous testimony.
{Tape: 2; Side: A; Approx. Time Counter: 143 - 257}

Closing by Sponsor:

The sponsor closed.
{Tape: 2; Side: A; Approx. Time Counter: 257 - 333}

HEARING ON HB 482

Sponsor: REP. GARY L. FORRESTER, HD 16, Billings

Opening Statement by Sponsor:

REP. FORRESTER read the title of the bill: An act providing that a provision in a construction contract that requires one party to the contract to indemnify another party to the contract, or the other party's officers, employees, or agents, for liability, losses, damages, or costs is void as against the public policy of this State; authorizing a construction contract to contain a provision requiring a party to a contract to purchase a project specific insurance policy.
{Tape: 2; Side: B; Approx. Time Counter: 333 - 353}

Proponents' Testimony:

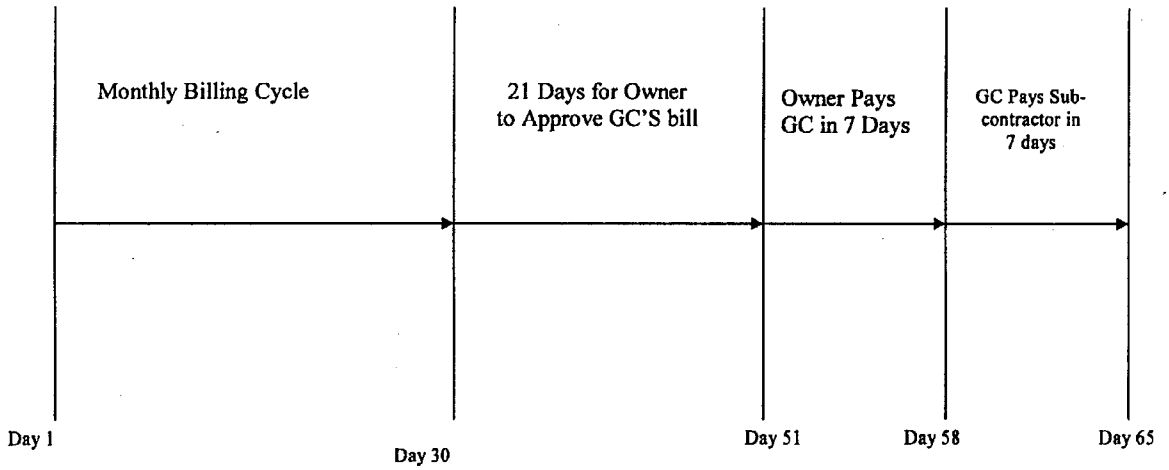
Carl Schweitzer, ASAM, provided written testimony regarding insurance of a contractor and indemnification provisions for the Montana Department of Transportation.
EXHIBIT(buh25a05)
{Tape: 2; Side: A; Approx. Time Counter: 353 - Tape: 2; Side: B; Approx. Time Counter: 39; Comments: Side B was recorded before Side A}

Cary Hegreberg, Montana Contractors Association, said there should be greater concern for subcontractors than the general contractor.
{Tape: 2; Side: B; Approx. Time Counter: 40 - 64}

Dick Anderson, Dick Anderson Construction, said contractors should only insure what they control on construction projects.
{Tape: 2; Side: B; Approx. Time Counter: 64 - 89}

Jerry Cooper, representing himself, said the cost of a construction project insurance is deductible.
{Tape: 2; Side: B; Approx. Time Counter: 89 - 101}

HB 438 Construction Payment Timetable



Section 2 (1) Allows an owner to require an alternative Billing Cycle other than the 30 Day

Section 2 (2) allows an owner to require an alternative approval cycle other than 21 days

Section 2 (3) allows an owner to require an alternative payment cycle other that 7 days

EXHIBIT 3
DATE 2-5-03
HB 438

ACEC/MT

EXHIBIT 4
DATE 2-5-03
HB 438

2003 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 438

INTRODUCED BY G. FORRESTER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTION 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-2103, MCA, is amended to read:

"28-2-2103. Payment to contractor and subcontractor. (1) (a) ~~If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.~~ Except as provided in [section2], each construction contract governed by this section must define, within the contract, a monthly billing cycle for the contractor to submit monthly progress payment requests and final payment requests to the owner. The contractor shall submit payment requests to the owner ~~or the owner's representative~~. Payment requests must be based upon actual or estimated work performed and materials supplied during the preceding monthly billing cycle. This requirement does not preclude an owner from mutually agreeing with the contractor to prepay for materials. The owner ~~or owner's representative~~ is considered to have received a payment request when the payment request is submitted to any person designated by the owner ~~or owner's representative~~ to receive the payment request.

(b) Except as provided in [section 2], a contractor's request for payment is considered approved by the owner 21 days after receipt of the request by the owner ~~or the owner's representative~~, unless, prior to that time, the owner ~~or the owner's representative~~ provides the contractor with a written statement containing specific items in the request for payment that are being disapproved by the owner ~~or the owner's representative~~.

(c) The owner ~~or the owner's representative~~ may disapprove the request for payment or a portion of the request based upon a claim of:

(i) unsatisfactory job progress;

(ii) failure to remedy defective construction work or materials;

(iii) disputed work or materials;

(iv) failure to comply with material provisions of the construction contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data;

(v) failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties;

(vi) damage to the owner; or

(vii) the existence of reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum.

(d) An owner ~~or owner's representative~~ may only withhold an amount from a payment that is sufficient to pay the direct expenses that the owner ~~or the owner's representative~~ may reasonably expect will be necessary to correct any claim based on the items set out in subsection (1)(c).

(e) A written statement by an owner ~~or owner's representative~~ must be furnished to the contractor specifying a condition that is listed in subsection (1)(c) for which approval of the request for payment or a portion of the request for payment is being withheld. If an owner ~~or the owner's representative~~ disapproves

only a portion of a request for payment, the remainder of the request for payment must be considered approved.

(f) Except as provided in [section2], if an owner approves all or a portion of a contractor's request for payment as provided in subsection (1)(b), the owner shall pay the contractor the approved amount within 7 days after the contractor's request for payment is approved.

(g) Upon written request of a subcontractor, an owner ~~or owner's representative~~ shall notify the subcontractor of any progress payment or final payment made to the contractor within 5 days of issuing payment. The subcontractor's request for notice remains in effect for the duration of the subcontractor's work on the project or until the contractor has been fully paid.

(h) Payment is not required under this subsection (1) unless the contractor provides the owner ~~or the owner's representative~~ with a billing statement or estimate for the work performed or the material supplied in accordance with the terms of the contract.

(2) (a) Within ~~3 working~~ 7 days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (2) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

(c) Prior to submitting a monthly or final pay application to the owner ~~or the owner's representative~~, the general contractor may disapprove the subcontractor's request for payment or a portion of the request based upon a written claim of any of the conditions listed in subsection (1)(c).

(3) (a) Within ~~3 working~~ 7 days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (3) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract."

NEW SECTION. **Section 2. Alternative billing cycle.** (1) A construction contract may provide for a billing cycle other than a monthly billing cycle if the construction contract specifically sets forth another billing cycle and either of the following applies:

(a) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents ~~on each page of the plans, including bid plans and construction plans~~:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. Payment requests for this contract must be submitted as follows:

_____

_____

_____; or

(b) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents ~~on each page of the plans, including bid plans and construction plans~~:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. A written description of the other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or the owner's designated agent must provide this written description on request.

(2) An owner may change the number of days to approve a contractor's payment request to later than 21 days after the date the payment request is submitted if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later approval date defined by a specified number of days after the payment request is submitted; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents ~~on each page of the plans, including bid plans and construction plans~~:

Notice of Approval of Payment Request Provision

This contract allows the owner to approve the contractor's payment request within ___ days after it is received by the owner.

(3) An owner may make payments later than 7 days after the date that the contractor's request for payment is approved if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after approval; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents ~~on each page of the plans, including bid plans and construction plans~~:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ___ days after approval of the payments.

NEW SECTION. **Section 3. Construction contracts -- void provisions.** (1) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract for a project in this state and that makes the contract subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from a dispute pertaining to the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.

(2) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract and that states that a party to the contract may not suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract as provided in 28-2-2103 is against the public policy of this state and is void and unenforceable.

NEW SECTION. **Section 4. Suspension of performance -- termination.** (1) (a) A contractor may suspend performance under a construction contract for failure by the owner to make timely payment of the amount approved pursuant to 28-2-2103, and the contractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A contractor shall provide written notice to the owner at least 7 calendar days before the contractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A contractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (1).

(d) A construction contract may not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection (1).

(2) (a) A subcontractor may suspend performance under a construction contract if the owner fails to make timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work and the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (2).

(d) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (2).

(3) (a) A subcontractor may suspend performance under a construction contract if the owner makes timely payment of amounts approved pursuant to section 28-2-2103 for the subcontractor's work but the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (3).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (3).

(4) (a) A subcontractor may suspend performance under a construction contract if the owner declines to approve portions of the contractor's payment request pursuant to 28-2-2103 for the subcontractor's work and the reasons for the owner's refusal to approve are not the fault of or directly related to the subcontractor's work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (4).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (4).

(5) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor.

(6) A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials, or services until the contractor or subcontractor is paid the amount that was approved, together with any costs incurred for mobilization and project rescheduling resulting from the shutdown or restartup of a project.

(7) Written notice required under this section must be considered to have been provided if either of the following occurs:

(a) the written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended; or

(b) the written notice is delivered at or sent by any means that provides written, third-party verification of delivery to the last-known business address of the party receiving notice.

NEW SECTION. **Section 5. Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [sections 2 through 4].

NEW SECTION. **Section 6. Applicability.** [This act] applies to construction contracts entered into on or after October 1, 2003.

- END -

Montana House of Representatives
Visitors Register

BUSINESS & LABOR COMMITTEE Date 2-5-03

Bill No. HB 438 Sponsor(s)

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

Name and Address	Representing	Support	Oppose	Inf.
Rudy Foster 1966 Ingraham Dale Helena, MT	Self		X	
Rod Hughes Helena	ACEC / MT		X	
Dirk Anderson	Self	X		
Shaun Bubb	MSBA		X	
John Fitzpatrick	NWE		X	
JERRY COOPER	SELF	X		
Carl Schweitzer	AGRI	X		
Cary Hegreberg	Contractors Asso.	X		
Doug Kaercher	Hill co. / MACo		X	
Margaret Morgan	Ind. Elec. Cont.	X		
ROBERT THROSSELL	MT Technical Council		X	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 2-5-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on February 11, 2003 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Jim Keane, Vice Chairman (D)
Rep. Donald Steinbeisser, Vice Chairman (R)
Rep. Bob Bergren (D)
Rep. Rod Bitney (R)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Ray Hawk (R)
Rep. Bob Lawson (R)
Rep. Rick Maedje (R)
Rep. Gary Matthews (D)
Rep. Scott Mendenhall (R)
Rep. Penny Morgan (R)
Rep. Allen Rome (R)
Rep. Sandy Weiss (D)
Rep. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Alberta Strachan, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 525 (2/7/03); HB 536 (2/6/03); HB 474 (2/6/03)
Executive Action: HB 307 Table; HB 119 Table; HB 438 Do Pass As Amend; HB 482 Do Pass;

EXECUTIVE ACTION ON HB 359

Motion: **REP. GALVIN-HALCRO** moved **HB 359 DO PASS.**

Motion: **REP. GALLIK** moved **HB 359 AMENDMENTS.**
EXHIBIT(buh30a09)

Discussion:

REP. GALVIN-HALCRO said opponents of the bill wanted these amendments and she explained the amendments.

REPS. ROME and **MORGAN** supported the amendment.

Substitute Motion/Vote: **REP. BITNEY** made a **SUBSTITUTE MOTION TO SEGREGATE #2 and #7 OF THE AMENDMENTS (Exhibit 9). A roll call vote was taken. Motion carried 12-6 with REPS. McKENNEY, STEINBEISSER, BITNEY, HAWK, MAEDJE, and MENDENHALL voting no.**

Discussion:

REP. BOOKOUT-REINICKE said she objected to the segregation of the amendments.

Motion/Vote: **REP. BITNEY** moved **NUMBERS 1,3,4,5 and 6 of the AMENDMENTS (Exhibit 9). A roll call vote was taken. Motion carried 18-0.**

Motion: **REP. BITNEY** moved **HB 359 DO PASS AS AMENDED.**

Discussion:

REP. GALLIK said there should be a fiscal note with this bill.

REPS. GALLIK, MENDENHALL, and McKENNEY opposed this bill.

Vote: **A roll call vote was taken. Motion passed 12-6 with REPS. McKENNEY, STEINBEISSER, BITNEY, HAWK, MAEDJE, and MENDENHALL voting no.**

EXECUTIVE ACTION ON HB 473

Motion: **REP. MENDENHALL moved that HB 473 DO PASS.**

EXECUTIVE ACTION ON HB 438

Motion: **REP. MAEDJE** moved **HB 438 DO PASS.**

Motion: **REP. BITNEY** moved **HB 438 AMENDMENTS.**
EXHIBIT(buh30a07)

Discussion:

REP. BITNEY discussed the amendments.**EXHIBIT(buh30a08)**

Mr. Campbell also discussed the amendments.

REP. MATTHEWS asked if the amendments had been discussed with the sponsor.

REP. ROME asked if these amendments were approved by the association.

Vote: **A roll call vote was taken. Motion carried 18-0.**

Motion: **REP. MAEDJE** moved **HB 438 AMENDMENTS.**

Discussion:

REPS. GALLIK, MORGAN, MATTHEWS opposed the amendments.

REP. MAEDJE supported these amendments.

Vote: **A roll call vote was taken. Motion failed 1-17 with REP. MAEDJE voting yes.**

Motion/Vote: **REP. BITNEY** moved **HB 438 DO PASS AS AMENDED. A roll call vote was taken. Motion carried 17-1 with CHAIRMAN McKENNEY voting no.**

EXECUTIVE ACTION ON HB 482

Motion/Vote: **REP. BOOKOUT-REINICKE** moved **HB 482 DO PASS. A roll call vote was taken. Motion carried 14-4 with REPS. McKENNEY, GALLIK, HAWK, and MENDENHALL voting no.**

EXHIBIT 7
DATE 2-11-03
HB 438

Amendments to House Bill No. 438
1st Reading Copy

Requested by Representative Rod Bitney

For the House Business and Labor Committee

Prepared by Bartley Campbell
February 10, 2003 (3:36pm)

1. Title, line 5.
Following: "CONTRACTS;"
Insert: "REVISING DEFINITIONS"

2. Title, line 10.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 28-2-2101 AND"

3. Page 1, following line 14.
Insert: "Section 1. Section 28-2-2101, MCA, is amended to read:
"28-2-2101. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:
(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.
(2) "Contractor" means a person who has signed a construction contract with an owner.
(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.
(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.
(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.
(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract. An owner may, in the contract, designate another person to represent the owner for the purpose of overseeing the performance of the construction contract and in handling administrative tasks respecting the construction contract.
~~(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.~~

~~(8)~~(7) "Receipt" or "receive" means actual receipt.

~~(9)~~(8) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

~~(10)~~(9) "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract."

{Internal References to 28-2-2101:
7-1-4001 x 18-2-123 x}"

4. Page 1, line 23.
Strike: "or the owner's representative"

5. Page 1, line 25.
Strike: "or owner's"

6. Page 1, line 26.
Strike: "representative"

7. Page 1, line 27.
Strike: "or owner's representative"
Insert: "in the contract"

8. Page 1, line 29.
Strike: "or the owner's representative"
Insert: "or the person designated in the contract by the owner to receive the payment request"

9. Page 1, line 30.
Strike: "or the owner's representative"

10. Page 2, line 1.
Strike: "or the owner's representative"

11. Page 2, line 2.
Strike: "or the owner's representative"

12. Page 2, line 14.
Strike: "or owner's representative"

13. Page 2, line 15.
Strike: "or the owner's representative"

14. Page 2, line 17.
Strike: "or owner's representative"

15. Page 2, line 19.
Strike: "or the owner's representative"

16. Page 2, line 24 through line 27.
Strike: ", an owner" on line 24 through "paid" on line 27
Insert: "who has not been paid for work in accordance with the provisions of subsection (2), an owner shall notify the subcontractor of a progress payment or final payment made to the general contractor"

17. Page 2, line 28.
Strike: "or the"

18. Page 2, line 29.
Strike: "owner's representative"

19. Page 3, line 6.
Strike: "or the owner's representative"

20. Page 3, line 19.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

21. Page 3, line 27.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

22. Page 4, line 8.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

23. Page 4, line 17.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

24. Page 6, line 24.

Strike: "2 through 4"
Insert: "3 through 5"

25. Page 6, line 26.
Strike: "2 through 4"
Insert: "3 through 5"

- END -

EXHIBIT 8
DATE 2-11-03
HB 438

Amendments to House Bill No. 438
1st Reading Copy

Requested by Representative Rick Maedje

For the House Business and Labor Committee

Prepared by Bartley Campbell
February 10, 2003 (3:33pm)

1. Title, line 10.
Following: "CONTRACT;"
Insert: "REQUIRING ARCHITECTS AND ENGINEERS TO ENSURE THAT BID PLAN AND CONSTRUCTION PLAN SPECIFICATIONS ARE ACCURATE;"

2. Page 6, following line 22.
Insert: "NEW SECTION. **Section 5. Bid and construction plan accuracy.** Architects and engineers who are hired to work on projects that are subject to the provisions of this part shall ensure that bid plan and construction plan specifications are accurate."
Renumber: subsequent sections

3. Page 6, line 24.
Strike: "4"
Insert: "5"

4. Page 6, line 26.
Strike: "4"
Insert: "5"

- END -

HOUSE OF REPRESENTATIVES
Roll Call
BUSINESS AND LABOR COMMITTEE

DATE 2-11-03

NAME	PRESENT	ABSENT	EXCUSED
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCall.2003

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2-11-03 BILL NO HB 438 MOTION NO. 1
MOTION: AMENDMENTS - 43801

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.	✓		
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		

/s/Bus&LaborRollCallVote.2003

18-0

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2-11-03 BILL NO HB438 MOTION NO. 2
MOTION: AMENDMENT 4380

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.		✓	
REP. DON STEINBEISSER, VICE CHAIR MAJORITY		✓	
REP. JIM KEANE, VICE CHAIR MINORITY		✓	
REP. BOB BERGREN		✓	
REP. ROD BITNEY		✓	
REP. SYLVIA BOOKOUT-REINICKE		✓	
REP. NANCY RICE FRITZ		✓	
REP. DAVE GALLIK		✓	
REP. KATHLEEN GALVIN-HALCRO		✓	
REP. RAY HAWK		✓	
REP. BOB LAWSON		✓	
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS		✓	
REP. SCOTT MENDENHALL		✓	
REP. PENNY MORGAN		✓	
REP. ALLEN ROME		✓	
REP. SANDY WEISS		✓	
REP. BILL WILSON		✓	

/s/Bus&LaborRollCallVote.2003

1 17

HOUSE OF REPRESENTATIVES
Roll Call Vote
BUSINESS AND LABOR COMMITTEE

DATE 2-11-03 BILL NO HB438 MOTION NO. 3
MOTION: DO PASS AS AMEND - 17-1

NAME	AYE	NO	ABSENTEE
REP. JOE McKENNEY, CHAIR.		✓	
REP. DON STEINBEISSER, VICE CHAIR MAJORITY	✓		
REP. JIM KEANE, VICE CHAIR MINORITY	✓		
REP. BOB BERGREN	✓		
REP. ROD BITNEY	✓		
REP. SYLVIA BOOKOUT-REINICKE	✓		
REP. NANCY RICE FRITZ	✓		
REP. DAVE GALLIK	✓		
REP. KATHLEEN GALVIN-HALCRO	✓		
REP. RAY HAWK	✓		
REP. BOB LAWSON	✓		
REP. RICK MAEDJE	✓		
REP. GARY MATTHEWS	✓		
REP. SCOTT MENDENHALL	✓		
REP. PENNY MORGAN	✓		
REP. ALLEN ROME	✓		
REP. SANDY WEISS	✓		
REP. BILL WILSON	✓		
	17	1	

/s/Bus&LaborRollCallVote.2003

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Business and Labor** recommend that **House Bill 438** (first reading copy -- white) **do pass as amended.**

Signed: _____
Representative Joe McKenney, Chair

And, that such amendments read:

1. Title, line 5.
Following: "CONTRACTS;"
Insert: "REVISING DEFINITIONS"

2. Title, line 10.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 28-2-2101 AND"

3. Page 1, following line 14.
Insert: "Section 1. Section 28-2-2101, MCA, is amended to read:
"28-2-2101. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:
(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.
(2) "Contractor" means a person who has signed a construction contract with an owner.
(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.
(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

mp
2/11 4pm

Committee Vote:
Yes 17, No 1.

301221SC.hhn

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract. An owner may, in the contract, designate another person to represent the owner for the purpose of overseeing the performance of the construction contract and in handling administrative tasks respecting the construction contract.

~~(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.~~

~~(8)~~ (7) "Receipt" or "receive" means actual receipt.

~~(9)~~ (8) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

~~(10)~~ (9) "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract.""

4. Page 1, line 23.
Strike: "or the owner's representative"

5. Page 1, line 25.
Strike: "or owner's"

6. Page 1, line 26.
Strike: "representative"

7. Page 1, line 27.
Strike: "or owner's representative"
Insert: "in the contract"

8. Page 1, line 29.
Strike: "or the owner's representative"
Insert: "or the person designated in the contract by the owner to receive the payment request"

9. Page 1, line 30.

Strike: "or the owner's representative"

10. Page 2, line 1.
Strike: "or the owner's representative"

11. Page 2, line 2.
Strike: "or the owner's representative"

12. Page 2, line 14.
Strike: "or owner's representative"

13. Page 2, line 15.
Strike: "or the owner's representative"

14. Page 2, line 17.
Strike: "or owner's representative"

15. Page 2, line 19.
Strike: "or the owner's representative"

16. Page 2, line 24 through line 27.
Strike: ", an owner" on line 24 through "paid" on line 27
Insert: "who has not been paid for work in accordance with the provisions of subsection (2), an owner shall notify the subcontractor of a progress payment or final payment made to the general contractor"

17. Page 2, line 28.
Strike: "or the"

18. Page 2, line 29.
Strike: "owner's representative"

19. Page 3, line 6.
Strike: "or the owner's representative"

20. Page 3, line 19.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the

construction documents"

21. Page 3, line 27.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

22. Page 4, line 8.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

23. Page 4, line 17.
Strike: "on each" through "construction plans"
Insert: "in the "Information for Bidders" section of the construction documents"

24. Page 6, line 24.
Strike: "2 through 4"
Insert: "3 through 5"

25. Page 6, line 26.
Strike: "2 through 4"
Insert: "3 through 5"

- END -

MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN DALE MAHLUM**, on March 21, 2003 at 9 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Don Ryan (D)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddye McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 438, 2/24/2003; HB 482, 2/28/2003
Executive Action: HB 438

{Tape: 1; Side: A}

HEARING ON HB 438

Sponsor: **REPRESENTATIVE GARY FORRESTER, HD 16, GARDINER**

Proponents: **Carl Schweitzer, American Sub-Contractors Association of Montana; Chuck Olson, James Talcott Construction; Dennis Iverson, Montana Contractors Association; Margaret Morgan, Independent Electrical Contractors Association; Mick Brown, Brown Plumbing and Montana Plumbing Contractors Association**

Opponents: **None**

Opening Statement by Sponsor:

REPRESENTATIVE GARY FORRESTER, HD 16, GARDINER, said HB 438 was introduced at the last legislative session, but has been changed. He thought it was done right this time.

Proponents' Testimony:

Carl Schweitzer, American Sub-Contractors Association of Montana, distributed a Construction Payment Timetable, **EXHIBIT(bus60a02),** and said this bill was brought back after introduction in the last legislative session. The contractors and sub-contractors got together with **REP. FORRESTER** and worked hard to produce this bill. It amends the payment bill passed four sessions ago and adds some more detail to it that the contracting industry felt was important to have for sub-contractors to be paid on time. One of the biggest issues a contractor faces is timely payment.

{Tape: 2; Side: A}

It's one of the reasons sub-contractors formed the American Sub-Contractors Association of Montana. **Mr. Schweitzer** shared that SB 438 was patterned after successful Arizona legislation, which caused a 28-day reduction in the amount of time a contractor had to wait for his money. **Mr. Schweitzer** went through each section of the bill with the committee.

Chuck Olson, James Talcott Construction, stated his agreement with what **Mr. Schweitzer** had shared with the committee. He noted that contractors and sub-contractors do not have the means to bankroll themselves for any extended period of time. All he asked for was the committee's consideration in passing this bill.

Dennis Iverson, Montana Contractors Association, strongly supported the bill and expressed appreciation to **REP. FORRESTER** and the sub-contractors for their hard work on the bill. He also expressed the support of **Byron Roberts, Montana Building Industry Association.**

Margaret Morgan, Independent Electrical Contractors Association, rose in support of the legislation. She shared a story of a member in Billings who lost $10K. He was a sub-contractor on a project and couldn't get paid. Ultimately, the contractor left the state. This bill would have helped him and would have given him some recourse. Many businessmen cannot take this kind of financial impact. She encouraged the committee's support.

Mick Brown, Brown Plumbing and Associated Plumbing and Heating Contractors of Montana, concurred with previous testimony. Cash flow is very important to them. He stated he would appreciate the support of the committee.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. KEN HANSEN asked **Mr. Schweitzer** if the bill included any federal contracts to which **Mr. Schweitzer** replied state laws cannot be applied to federal jobs.

SEN MIKE SPRAGUE wanted to know if the bill applied to a dollar amount. **Mr. Schweitzer** replied that, with regard to residential construction, it applies to any home over $400K total project cost.

SEN. ROUSH questioned **Mr. Schweitzer** about his organization coming back next session to change this legislation again. **Mr. Schweitzer** assured **SEN. ROUSH** and the committee he did not plan on coming back and changing it.

{Tape: 2; Side: B}

SEN. VICKI COCCHIARELLA commented on how pleased she was to see contractors and sub-contractors come together to solve this problem and come up with this bill.

Closing by Sponsor:

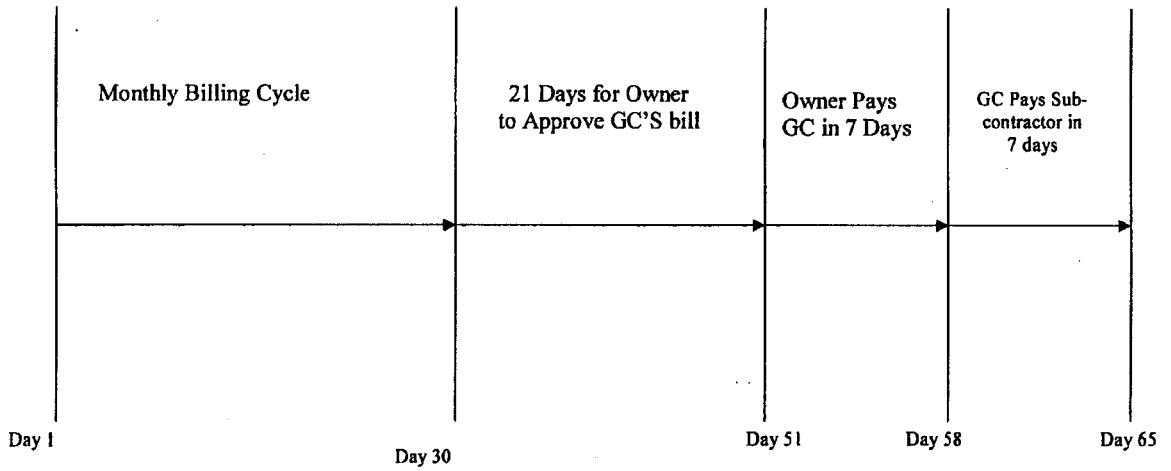
REP. FORRESTER thanked the committee for a good hearing. He advised **SEN. ROUSH** and the committee that all sub-contractors are asking for is fairness. This bill gives a contractor the ability

to collect his money in a timely fashion or allow him to stop work on the job without the fear someone else will be hired and it will come out of the contractor's pocket. When they came before this committee two years ago, they had many associations oppose the bill. County commissioners did not like the bill at first, but now understand it and don't have a problem with it.

EXECUTIVE ACTION ON HB 438

Motion/Vote: SEN. COCCHIARELLA moved that HB 438 BE CONCURRED IN. Motion carried 8-0. SENATOR GLASER WILL CARRY THE BILL.

HB 438 Construction Payment Timetable



Section 2 (1) Allows an owner to require an alternative Billing Cycle other than the 30 Day

Section 2 (2) allows an owner to require an alternative approval cycle other than 21 days

Section 2 (3) allows an owner to require an alternative payment cycle other that 7 days

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 3
DATE 3/21/03
BILL NO. HB 438

from Carl Schweitzer
Univ. of MT.

MONTANA SENATE
2003 LEGISLATURE
BUSINESS & LABOR COMMITTEE
ATTENDANCE

DATE: March 21, 2003

NAME	PRESENT	EXCUSED	ABSENT
SENATOR DALE MAHLUM, CHAIR	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR SHERM ANDERSON	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR KELLY GEBHARDT	✓		
SENATOR BOB KEENAN		✓	
SENATOR SAM KITZENBERG	✓		
SENATOR KEN HANSEN	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN		✓	
SENATOR CAROLYN SQUIRES	✓		
SENATOR FRED THOMAS		✓	

MONTANA SENATE
2003 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE: 3/21/03 BILL NO. HB438

MOTION:

Sen. Cocchiarella moved that HB 438 be concurred in.

NAME	AYE	NO
SENATOR DALE MAHLUM, CHAIR	✓	
SENATOR MIKE SPRAGUE, VICE CHAIR	✓	
SENATOR SHERM ANDERSON	✓	
SENATOR VICKI COCCHIARELLA	✓	
SENATOR KELLY GEBHARDT	✓	
SENATOR KEN HANSEN	✓	
SENATOR BOB KEENAN		
SENATOR SAM KITZENBERG		
SENATOR GLENN ROUSH	✓	
SENATOR DON RYAN		
SENATOR CAROLYN SQUIRES	✓	
SENATOR FRED THOMAS		
8-0		

DATE 3/21/03

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: HB438, HB482

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Chuck Olson	406 761-0018	James Talcott Const.	438 482	✓	
Earl Hanson	406-255-7133	JTL Group, Inc.	482	✓	
Ed Murphy	406-728-8499	Frontier West	482	✓	
Carol Schweitzer	443-5774	ASAM APHA	438 438	✓	
Mick Brown	656-8585	Brown Plumbing (BLCS)	482 438	✓	
Margaret Morgan	431-9836	Independent Elec. Contractors	438 482	✓	
Robert Pavlovich	782-4507	IBEW 233	438 482	X	
Brett Abell	406 444-3581	Administration	438		
Jim Reardon		Dept of Trans.			

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

2003 Montana Legislature

About Bill -- Links

HOUSE BILL NO. 438
INTRODUCED BY FORRESTER, GLASER, D. RYAN

AN ACT REVISING THE REQUIREMENTS FOR PAYMENTS TO CONTRACTORS AND SUBCONTRACTORS WITH RESPECT TO CONSTRUCTION CONTRACTS; REVISING DEFINITIONS; PROVIDING THAT A CONSTRUCTION CONTRACT MAY PROVIDE FOR A BILLING CYCLE THAT IS OTHER THAN A MONTHLY BILLING CYCLE; PROVIDING THAT CERTAIN CONSTRUCTION CONTRACT PROVISIONS ARE AGAINST STATE POLICY AND ARE VOID AND UNENFORCEABLE; ESTABLISHING CONDITIONS UNDER WHICH A CONTRACTOR OR SUBCONTRACTOR MAY SUSPEND PERFORMANCE OR TERMINATE A CONSTRUCTION CONTRACT; AMENDING SECTIONS 28-2-2101 AND 28-2-2103, MCA; AND PROVIDING AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 28-2-2101, MCA, is amended to read:

"28-2-2101. Definitions. As used in this part, unless the context requires otherwise, the following terms apply:

(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) "Contractor" means a person who has signed a construction contract with an owner.

(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear,

plant, landscape, or furnish material or labor, or both for an improvement.

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract. An owner may, in the contract, designate another person to represent the owner for the purpose of overseeing the performance of the construction contract and in handling administrative tasks respecting the construction contract.

~~(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.~~

~~(8)~~(7) "Receipt" or "receive" means actual receipt.

~~(9)~~(8) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

~~(10)~~(9) "Subcontractor" means a person who has contracted with a contractor or another subcontractor for the purposes of performance of all or a part of a subcontract."

Section 2. Section 28-2-2103, MCA, is amended to read:

"28-2-2103. Payment to contractor and subcontractor. (1) (a) ~~If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.~~ Except as provided in [section 2], each construction contract governed by this section must define, within the contract, a monthly billing cycle for the contractor to submit monthly progress payment requests and final payment requests to the owner. The contractor shall submit payment requests to the owner. Payment requests must be based upon actual or estimated work performed and materials supplied during the preceding monthly billing cycle. This requirement does not preclude an owner from mutually agreeing with the contractor to prepay for materials. The owner is considered to have received a payment request when the payment request is submitted to any person designated by the owner in the contract to receive the payment request.

(b) Except as provided in [section 2], a contractor's request for payment is considered approved by the owner 21 days after receipt of the request by the owner or the person designated in the contract by the owner to receive the payment request, unless, prior to that time, the owner provides the contractor with a written

statement containing specific items in the request for payment that are being disapproved by the owner.

(c) The owner may disapprove the request for payment or a portion of the request based upon a claim of:

(i) unsatisfactory job progress;

(ii) failure to remedy defective construction work or materials;

(iii) disputed work or materials;

(iv) failure to comply with material provisions of the construction contract or accompanying documents, including but not limited to payroll certifications, lien releases, warranties, material certifications, and test data;

(v) failure of a contractor to make timely payment for claims, including but not limited to claims for labor, equipment, materials, subcontracts, taxes, fees, professional services, rent, and royalties;

(vi) damage to the owner; or

(vii) the existence of reasonable evidence that the construction contract cannot be completed for the unpaid balance of the contract sum.

(d) An owner may only withhold an amount from a payment that is sufficient to pay the direct expenses that the owner may reasonably expect will be necessary to correct any claim based on the items set out in subsection (1)(c).

(e) A written statement by an owner must be furnished to the contractor specifying a condition that is listed in subsection (1)(c) for which approval of the request for payment or a portion of the request for payment is being withheld. If an owner disapproves only a portion of a request for payment, the remainder of the request for payment must be considered approved.

(f) Except as provided in [section 2], if an owner approves all or a portion of a contractor's request for payment as provided in subsection (1)(b), the owner shall pay the contractor the approved amount within 7 days after the contractor's request for payment is approved.

(g) Upon written request of a subcontractor who has not been paid for work in accordance with the provisions of subsection (2), an owner shall notify the subcontractor of a progress payment or final payment made to the general contractor.

(h) Payment is not required under this subsection (1) unless the contractor provides the owner with a billing statement or estimate for the work performed or the material supplied in accordance with the terms of the contract.

(2) (a) Within ~~3 working~~ 7 days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (2) unless the subcontractor provides the contractor a

billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract.

(c) Prior to submitting a monthly or final pay application to the owner, the general contractor may disapprove the subcontractor's request for payment or a portion of the request based upon a written claim of any of the conditions listed in subsection (1)(c).

(3) (a) Within ~~3 working~~ 7 days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

(b) Payment is not required under this subsection (3) unless the subcontractor provides the contractor a billing statement or invoice for work performed or materials supplied pursuant to the terms of the subcontract."

Section 3. Alternative billing cycle. (1) A construction contract may provide for a billing cycle other than a monthly billing cycle if the construction contract specifically sets forth another billing cycle and either of the following applies:

(a) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. Payment requests for this contract must be submitted as follows:

_____

_____

_____; or

(b) a notice in substantially the following form, setting forth the other billing cycle, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Alternate Billing Cycle

This contract allows the owner to require the submission of payment requests in billing cycles other than once a month. A written description of the other billing cycle applicable to the project is available from the owner or the owner's designated agent at (telephone number or address, or both), and the owner or the owner's designated agent must provide this written description on request.

(2) An owner may change the number of days to approve a contractor's payment request to later than 21 days after the date the payment request is submitted if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later approval date defined by a specified number of days after the payment request is submitted; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Approval of Payment Request Provision

This contract allows the owner to approve the contractor's payment request within ___ days after it is received by the owner.

(3) An owner may make payments later than 7 days after the date that the contractor's request for payment is approved if:

(a) the construction contract in a clear and conspicuous manner specifically provides for a later payment defined by a specified number of days after approval; and

(b) a notice in substantially the following form, setting forth the specified number of days, appears in clear and conspicuous type in the "Information for Bidders" section of the construction documents:

Notice of Extended Payment Provision

This contract allows the owner to make payment within ___ days after approval of the payments.

Section 4. Construction contracts -- void provisions. (1) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract for a project in this state and that makes the contract subject to the laws of another state or that requires any litigation, arbitration, or other dispute resolution proceeding arising from a dispute pertaining to the contract to be conducted in another state is against the public policy of this state and is void and unenforceable.

(2) A provision, covenant, clause, or understanding that is in, collateral to, or affects a construction contract and that states that a party to the contract may not suspend performance under the contract or terminate the contract if another party to the contract fails to make prompt payments under the contract as provided in 28-2-2103 is against the public policy of this state and is void and unenforceable.

Section 5. Suspension of performance -- termination. (1) (a) A contractor may suspend performance under a construction contract for failure by the owner to make timely payment of the amount approved pursuant to 28-2-2103, and the contractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A contractor shall provide written notice to the owner at least 7 calendar days before the contractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A contractor may not be considered in breach of a construction contract for suspending performance or

terminating a construction contract pursuant to this subsection (1).

(d) A construction contract may not extend the time period for a contractor to suspend performance or terminate a construction contract under this subsection (1).

(2) (a) A subcontractor may suspend performance under a construction contract if the owner fails to make timely payment of amounts approved pursuant to 28-2-2103 for the subcontractor's work and the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract.

(c) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (2).

(d) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (2).

(3) (a) A subcontractor may suspend performance under a construction contract if the owner makes timely payment of amounts approved pursuant to section 28-2-2103 for the subcontractor's work but the contractor fails to pay the subcontractor for the approved work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (3).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (3).

(4) (a) A subcontractor may suspend performance under a construction contract if the owner declines to approve portions of the contractor's payment request pursuant to 28-2-2103 for the subcontractor's work and the reasons for the owner's refusal to approve are not the fault of or directly related to the subcontractor's work. The subcontractor may terminate the construction contract if the payment obligations are not satisfied within 30 days of suspension.

(b) A subcontractor may not be considered in breach of a construction contract for suspending performance or terminating a construction contract pursuant to this subsection (4).

(c) A construction contract may not extend the time period for a subcontractor to suspend performance or terminate a construction contract under this subsection (4).

(5) A subcontractor shall provide written notice to the contractor and the owner at least 7 calendar days

before the subcontractor's intended suspension of performance or contract termination unless a shorter notice period is prescribed in the construction contract between the contractor and subcontractor.

(6) A contractor or subcontractor that suspends performance as provided in this section is not required to furnish further labor, materials, or services until the contractor or subcontractor is paid the amount that was approved, together with any costs incurred for mobilization and project rescheduling resulting from the shutdown or restartup of a project.

(7) Written notice required under this section must be considered to have been provided if either of the following occurs:

(a) the written notice is delivered in person to the individual or a member of the entity or to an officer of the corporation for which it was intended; or

(b) the written notice is delivered at or sent by any means that provides written, third-party verification of delivery to the last-known business address of the party receiving notice.

Section 6. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 28, chapter 2, part 21, and the provisions of Title 28, chapter 2, part 21, apply to [sections 3 through 5].

Section 7. Applicability. [This act] applies to construction contracts entered into on or after October 1, 2003.

- END -

Latest Version of HB 438 *(HB0438.ENR)*

Processed for the Web on April 2, 2003 (1:47pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the status of this bill for the bill's primary sponsor.

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Authorized print version w/line numbers (PDF format)

Prepared by Montana Legislative Services

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